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No. 85-889

In the Supreme Court of the United States

OCTOBER TERM, 1985

STATE OF COLORADO, PETITIONER

v.

STEVEN LEE BERTINE

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF COLORADO

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether the Fourth Amendment permits law enforcement officers, in the course of lawfully impounding a motor vehicle, to inventory the contents of containers found in the interior of the vehicle.

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INTEREST OF THE UNITED STATES

This case presents an important and recurring question under the Fourth Amendment concerning the permissible scope of an inventory search by law enforcement officers of the contents of a lawfully impounded motor vehicle. The Colorado Supreme Court held that inventory searches may not, consistent with the Fourth Amendment, extend to the contents of containers found inside a motor vehicle. Although this case concerns a state prosecution, federal law enforcement officers are authorized to conduct inven-

tory searches under certain circumstances. In addition, federal prosecutions often rely on evidence incidentally obtained by state and local law enforcement officers in the course of their own inventory searches. Accordingly, the issues presented by this case are of substantial interest to federal law enforcement officers and prosecutors.

STATEMENT

Petitioner, the State of Colorado, charged respondent with unlawful possession of cocaine and methaqualone, in violation of Colo. Rev. Stat. § 18-18-105 (Supp. 1985), and with driving while under the influence of alcohol, in violation of Colo. Rev. Stat. § 42-4-1202(1)(a) (1984). Complaint 1-2. Local law enforcement officers discovered the methaqualone and cocaine, along with cocaine paraphernalia, during an inventory of the contents of several closed containers located in respondent's panel truck. The inventory of the truck took place following respondent's arrest for driving while under the influence of alcohol (Pet. App. 28-29). Respondent moved to suppress the methaqualone, cocaine, and cocaine paraphernalia, and the trial court granted the motion (J.A. 79-88). On the State's appeal, the Colorado Supreme Court affirmed the suppression ruling (Pet. App. 25-51).

1. The evidence at the suppression hearing showed that on February 10, 1984, at approximately 12:50 a.m., Officer Julius Toporek of the Boulder Police Department observed respondent's truck weaving in traffic and speeding (Pet. App. 26). Officer Toporek stopped the truck and approached respondent. In speaking with respondent, Officer Toporek noticed that his breath had a strong odor of alcohol, his

"eyes were watery and glassy," and his "speech was slurred and somewhat dragged out" (*id.* at 27). Officer Toporek then asked respondent to perform a series of roadside sobriety tests (*ibid.*). Based on the results of those tests, Officer Toporek concluded that respondent was intoxicated, and he arrested respondent for driving while under the influence of alcohol (*id.* at 27-28).

Officer Toporek then asked Officer Paul Reichenback, who had arrived just prior to the arrest, to impound respondent's truck while Officer Toporek took respondent into custody (Pet. App. 28). At the time, the truck was parked in a no-parking area of a highway (*id.* at 27; J.A. 8-9). Prior to the arrival of a tow truck to take respondent's vehicle to the impoundment lot, Officer Reichenback conducted an inventory of the truck's interior according to standard local police department procedures (Pet. App. 28 & n.2). In the course of that procedure, Officer Reichenback inventoried the contents of a closed backpack that he found directly behind the front seat of the truck (*id.* at 28-29). Inside the backpack, he found a nylon bag that contained three tin cans and a coffee can (*id.* at 29). Opening each of the cans, the officer discovered that they contained cocaine, cocaine paraphernalia, several tablets in a zip-lock bag, and $700 in cash (*ibid.*). The local police subsequently determined that the tablets contained methaqualone (Complaint 1).

2. Following the suppression hearing, the trial court found that the two officers had made the decisions to impound the vehicle and to inventory its contents according to standard police procedures and in good faith (J.A. 80, 86). The court also found that "the search of the backpack was done for the

purpose of protecting [respondent's] property, protection of the police from subsequent claims of loss or stolen property, and the protection of the police from dangerous instrumentalities. It was not a pretext for an investigative search." *Id.* at 82; see also *id.* at 86. The court held that standard police department procedures did not require the officers to ask respondent whether he preferred to have his truck parked and locked rather than impounded.[1] The court also found that an inventory of an impounded motor vehicle pursuant to standard procedures included "the opening of containers and the listing of contents" (*id.* at 80, 81). Based on those findings and its reading of this Court's decision in *Illinois* v. *Lafayette*, 462 U.S. 640 (1983), the court concluded that the inventory search did not violate the Fourth Amendment (Pet. App. 83). The court nonetheless granted respondent's motion to dismiss, ruling that the inventory search violated the Colorado Constitution, as construed by the Colorado Supreme Court in a 1976 decision, *People* v. *Counterman*, 192 Colo. 152, 556 P.2d 481 (Pet. App. 83-87).

3. On the State's interlocutory appeal, the Colorado Supreme Court affirmed. Unlike the trial court, however, the Colorado Supreme Court based its ruling on the Fourth Amendment and not on the state constitution (Pet. App. 26-51). Citing this Court's decisions in *Arkansas* v. *Sanders*, 442 U.S. 753 (1979), and *United States* v. *Chadwick*, 433 U.S. 1 (1977), the court concluded "that an individual possesses a reasonable expectation of privacy in regard to sealed containers" that are found in an automobile.

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[1] Under the local "park and lock" procedures, the police officer simply drives the car to a legal parking place where he removes the ignition key and locks the car. See J.A. 90-94.

That expectation of privacy, the court held, "must be respected during an inventory search" (Pet. App. 35, 37-38). The Colorado Supreme Court rejected the trial court's conclusion that this Court's more recent decision in *Illinois* v. *Lafayette*, *supra*, required a different result (Pet. App. 39-44). According to the state court, *Lafayette* permits inventory searches of closed containers only when the search is incident to the incarceration of the arrested individual and occurs at the stationhouse (Pet. App. 40-41).

To determine the reasonableness of the inventory search of respondent's knapsack and the containers located inside it, the state supreme court weighed the governmental interests advanced by the inventory in this case against the intrusiveness of the search (Pet. App. 44-48). The court concluded that the inventory of the knapsack and the containers was unreasonable and, accordingly, violated the Fourth Amendment. In reaching that conclusion, the court stressed several factors, including (1) that the impound lot was enclosed and was routinely patrolled by the police (Pet. App. 44-45); (2) that respondent was available and could have been asked if he would have preferred an alternative disposition of the truck and its contents (*id.* at 45-47); and (3) that the containers were apparently meant to hold personal items and provided "little indication" that they contained valuables or dangerous materials (*id.* at 47-48). Although the court found that the inventory search was unreasonable, it did not question the trial court's finding that the police officer had performed the inventory search according to standard procedures and in good faith (*id.* at 50).

Two justices dissented, contending that the case was controlled by this Court's decision in *Lafayette*. The

dissenters distinguished *Chadwick* and *Sanders* on the grounds that neither involved an inventory search and that both involved warrantless searches of luggage found in the trunk of an automobile (Pet. App. 58-76). They also pointed out that *Lafayette* specifically rejected the balancing analysis employed by the majority, which focused on case-specific factors such as the type of container searched and the availability of less intrusive alternatives (Pet. App. at 61-66).

SUMMARY OF ARGUMENT

The decision of the Colorado Supreme Court fundamentally misconceives the nature of inventory searches. As this Court explained in *South Dakota* v. *Opperman*, 428 U.S. 364 (1976), inventory searches are a necessary by-product of the caretaking responsibility of law enforcement officials for those items of personal property that come into their possession in the course of the regular performance of their duties. Whether they occur in a criminal or non-criminal setting, inventory searches are reasonable because they address three distinct non-investigative concerns: (1) protection of the police against false claims of theft; (2) protection of the owner of the property from theft; and (3) protection of the police from potential dangers posed by property in police custody.

The court below erroneously concluded that these concerns did not justify an inventory of the containers in respondent's lawfully impounded truck. In reaching that conclusion, the court ignored the special nature of inventory searches and subjected the inventory procedure to the kind of constitutional scrutiny that is more typically reserved for investigative searches. Weighing the degree of the intrusion in

this case against the need for an inventory search in the particular circumstances in which the truck was seized, the court found that the search in this case was not supported by "compelling governmental interests." The court therefore held that the search violated the Fourth Amendment.

Such particularized and heightened judicial scrutiny has no place in the inventory search context. Contrary to the decision of the court below, the demands of the administrative caretaking function do not lose their force when applied to an inventory search of closed containers discovered by law enforcement officers in a lawfully impounded motor vehicle. Neither the reasonableness of an individual's expectations of privacy in a particular container nor the availability of less intrusive alternatives affects the validity of an inventory search. As long as the inventory search extends only to those containers that may contain valuables or dangerous instrumentalities, and as long as it is performed according to standard inventory procedures, the search of the containers satisfies the Fourth Amendment.

The rationale underlying this Court's decisions on the subject makes it clear that inventory searches may lawfully extend to the contents of closed containers found in a motor vehicle. In *South Dakota* v. *Opperman*, *supra*, the Court upheld an inventory search of the contents of the interior of a motor vehicle lawfully impounded by police, including a search of the glove compartment, which "is a customary place * * * for the temporary storage of valuables" (428 U.S. at 372). Although *Opperman* did not involve an inventory search of the contents of a separate container discovered in the vehicle, this Court left little doubt that such a search would be valid.

Treating the motor vehicle itself as a container, the Court upheld the right of police to inventory its contents and to remove loose personal property for storage at the police station. The Court did not require that the police simply seal the vehicle as a unit or follow "park and lock" procedures instead of impoundment.

The Court's more recent decision in *Illinois* v. *Lafayette*, 462 U.S. 640 (1983), dispels any possible remaining doubt that an inventory search may extend to containers. In *Lafayette*, the Court upheld an inventory search of a shoulder bag in the possession of an individual being taken into police custody. The Court in *Lafayette* rejected suggestions that the Fourth Amendment imposes limitations on inventory searches of the sort that the court below imposed in this case. In particular, the Court rejected contentions that the police must pursue less intrusive alternatives or that the reasonableness of a search of a particular container turns on the arrested individual's expectations of privacy in the container. Although the inventory search in *Lafayette* was performed at the stationhouse just prior to the defendant's incarceration, the different setting for the search does not require a different analysis of the lawfulness of the inventory procedure. Whether a container is first taken into police custody at the stationhouse incident to the incarceration of an individual or during the impoundment of a motor vehicle following the driver's arrest, the policies justifying an inventory search are the same. It is the fact that personal property of another is in police custody that triggers the caretaking responsibilities of law enforcement officials. In *Lafayette* and in this case, the police caretaking responsibilities were virtually identical, because in each case the individual's property was to

be retained by the police for safekeeping while the individual was in police custody. The permissible scope of the inventory search should therefore be the same in both settings.

ARGUMENT

THE FOURTH AMENDMENT DOES NOT BAR AN INVENTORY SEARCH OF CONTAINERS FOUND IN A LAWFULLY IMPOUNDED MOTOR VEHICLE

This case concerns the permissible scope of routine inventory searches of personal property. The Colorado Supreme Court held that such searches may not extend to the contents of containers discovered by police officers in the course of inventorying a lawfully impounded motor vehicle. We disagree. It is our submission that the state court ignored the valid administrative function of inventory searches and erroneously applied a heightened level of Fourth Amendment scrutiny that is applicable only to investigative searches. The legitimate concerns that justify inventory searches apply to the inventorying of all kinds of containers that come into police custody through lawful means; there is no reason to apply a different rule based on the mere happenstance that the containers were, as in this case, first discovered in a lawfully impounded motor vehicle. That principle is borne out by this Court's decisions on the subject of inventory searches, and there is nothing about the circumstances of this case that takes it outside the reach of those decisions.

1. In *South Dakota* v. *Opperman*, 428 U.S. 364 (1976), this Court held that the police may conduct a routine inventory of the contents of an automobile that has been lawfully impounded, and that the police may remove certain of the inventoried items for safe-

keeping. The Court observed that the routine administrative practice of securing and inventorying property taken into police custody incident to the performance of law enforcement responsibilities developed in response to three distinct needs: (1) the protection of the owner's property while it remains in police custody; (2) the protection of the police against claims or disputes over lost or stolen property; and (3) the protection of the police from potential danger. *Id.* at 369. See also *Cady* v. *Dombrowski*, 413 U.S. 433, 446-447 (1973); *Harris* v. *United States*, 390 U.S. 234, 235-236 (1968); *Cooper* v. *California*, 386 U.S. 58, 61-62 (1967).

Although Fourth Amendment concerns clearly are implicated by the practice of inventorying the contents of an automobile (*Opperman*, 428 U.S. at 377 n.1 (Powell, J., concurring)), the reasonableness of the practice does not depend on the existence of probable cause or a formal warrant. "The standard of probable cause is peculiarly related to criminal investigations, not routine, non-criminal procedures" and the policies underlying the warrant requirement do not come into play in the non-investigative context of an inventory search. *Opperman*, 428 U.S. at 370 n.5. In the case of an inventory search, the officer "does not make a discretionary determination to search based on a judgment that certain conditions are present. Inventory searches are conducted in accordance with established police department rules or policy and occur whenever an automobile is seized. There are thus no special facts for a neutral magistrate to evaluate." *Id.* at 383 (Powell, J., concurring).

In *Opperman*, the Court upheld the inventory search of the glove compartment of a seized vehicle

"since it is a customary place for documents of ownership and registration * * * as well as a place for the temporary storage of valuables" (*id.* at 372). The Court stressed that standard inventory searches included the examination of glove compartments and that there was "no suggestion whatever that this standard procedure * * * was a pretext concealing an investigatory police motive" (*id.* at 372, 376 (footnote omitted)).

Opperman did not directly address the precise issue presented in this case: whether the scope of an inventory search may extend to the opening of closed but unsecured containers located in the interior of a lawfully impounded vehicle. The decision nonetheless strongly supports the validity of such an inventory search. *Opperman* responded to the legitimate noninvestigative needs of law enforcement officers to inventory personal property that is taken into police custody for safekeeping. In particular, this Court recognized in *Opperman* that " 'when the police take custody of *any sort of container* [such as] an automobile * * * it is reasonable to search the container to itemize the property to be held by the police.' " 428 U.S. at 371, quoting *United States* v. *Gravitt*, 484 F.2d 375, 378 (5th Cir. 1973), cert. denied, 414 U.S. 1135 (1974) (emphasis added; brackets in original). The Court, moreover, rejected any notion that the Fourth Amendment required that rather than conducting an inventory, the police must instead either seal the automobile as a unit or use "park and lock" procedures. See *Opperman*, 428 U.S. at 379 (Powell, J., concurring).

The court below, ignoring the basis of the Court's reasoning in *Opperman*, concluded that a valid inventory search of a lawfully impounded motor vehicle

could not extend to the contents of containers discovered by law enforcement officers inside the vehicle. Finding that the inventory search was not supported by "compelling governmental interests," and balancing "the [respondent's] privacy interests in the [containers against] the government's need to inventory their contents," the court held that the search violated the Fourth Amendment (Pet. App. 43, 49).

Such particularized and heightened judicial scrutiny has no place in the inventory context. Inventory searches, this Court has held, are justified by the overall reasonableness of routine inventory procedures. As *Opperman* firmly established, neither the reasonableness of an individual's expectations of privacy in a particular container nor the availability of less intrusive alternatives in a particular case affects the validity of a routine inventory search. Hence, just as it was reasonable for the police to inventory the contents of the lawfully seized container (an automobile) in *Opperman*, it is reasonable for the police to inventory the contents of any containers subsequently discovered by officers inside that larger container.[2] The fact that the police may discover a container inside another container in the course of a

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[2] Notably, the Court in *Opperman* cited with approval a number of lower court decisions upholding searches of the contents of containers found during automobile inventories. See *United States* v. *Mitchell*, 458 F.2d 960 (9th Cir. 1972) (sample case); *United States* v. *Lipscomb*, 435 F.2d 975 (5th Cir. 1970), cert. denied, 401 U.S. 980 (1971) (suitcase); *Lowe* v. *Hopper*, 400 F. Supp. 970 (S.D. Ga. 1975) (sealed envelope in plastic pouch); *State* v. *Tully*, 166 Conn. 126, 348 A.2d 603 (1974) (paper bag and knapsack); *People* v. *Sullivan*, 29 N.Y.2d 69, 272 N.E.2d 464, 323 N.Y.S. 2d 945 (1971) (briefcase); *State* v. *Montague*, 73 Wash. 2d 381, 438 P.2d 571 (1968) (paper bag).

lawful inventory search does not diminish the continuing non-investigative needs of law enforcement officials to inventory the contents of the newly-discovered container. Under *Opperman*, as long as the inventory search extends only to those containers that may contain valuables or dangerous instrumentalities, and as long as the inventory search is performed according to standard inventory procedures, the search of a container and the seizure of its contents comports with the Fourth Amendment command of reasonableness.

2. This Court's more recent decision in *Illinois* v. *Lafayette*, 462 U.S. 640 (1983), dispels any remaining doubt concerning the validity of inventorying the contents of containers found in a lawfully impounded motor vehicle. In *Lafayette*, the Court upheld an inventory search of a shoulder bag in the possession of an individual being taken into police custody, even though the individual clearly had substantial expectations of privacy in the bag and its contents. See *New Jersey* v. *T.L.O.*, No. 83-712 (Jan. 15, 1985), slip op. 11. In upholding the inventory procedure, the Court specifically rejected the very limitations that the state court sought to place on the inventory search in this case.

a. First, the Court in *Lafayette* squarely rejected the state court's contention (Pet. App. 34-39) that *Arkansas* v. *Sanders*, 442 U.S. 753 (1979), and *United States* v. *Chadwick*, 433 U.S. 1 (1977), impose warrant and probable case requirements on inventory searches of containers. See 462 U.S. at 643-644. Both *Chadwick* and *Sanders* concerned investigative searches of closed containers taken from automobiles; they did not involve "incidental administrative step[s]" such as routine non-investigative inven-

tory searches (*id.* at 644). See *United States* v. *Laing*, 708 F.2d 1568, 1571 (11th Cir.), cert. denied, 464 U.S. 896 (1983). In *Chadwick*, moreover, the majority stressed that the case had no bearing on the availability of "other justifications for a warrantless search of luggage taken from a suspect at the time of his arrest" (433 U.S. at 15 n.9). With specific reference to inventory searches, the Court stated that "the salutary functions of a warrant simply have no application in [the inventory search] context; the constitutional reasonableness of inventory searches must be determined on other bases." *Id.* at 10 n.5. The dissenters in *Chadwick* likewise noted the continued viability of the inventory exception (*id.* at 21).

The *Lafayette* decision also rejected the state court's suggestion (Pet. App. 44-47) that the validity of a particular inventory search turns on a weighing of the need to search the particular container against the strength of the individual's privacy interests in that container. In particular, the Court in *Lafayette* rejected the argument that because of the arrestee's expectations of privacy in the shoulder bag, the police should have employed the "less intrusive alternative" of inventorying the shoulder bag as a unit rather than examining its contents (462 U.S. at 647). "The reasonableness of any particular governmental activity does not necessarily or invariably turn on the existence of alternative 'less intrusive' means," the Court explained. "The real question is not what 'could have been achieved,' but whether the Fourth Amendment *requires* such steps; it is not our function to write a manual on administering routine, neutral procedures of the station house." *Ibid.* (emphasis in original); see also *United States* v. *Martinez-*

Fuerte, 428 U.S. 543, 557 n.12 (1976); *Cady* v. *Dombrowski*, 413 U.S. at 447 (1973). The Court added that "it would be unreasonable to expect police officers in the everyday course of business to make fine and subtle distinctions in deciding which containers or items may be * * * sealed as a unit." 462 U.S. at 648; see also *United States* v. *Ross*, 456 U.S. 798, 821 (1982); *New York* v. *Belton*, 453 U.S. 454, 458 (1981). That analysis, as Professor LaFave has suggested, applies equally to inventory searches of containers taken from arrestees and containers found in their vehicles. W. LaFave, *Search and Seizure* § 7.4, at 274 (Supp. 1986) (footnotes omitted) ("[A] unanimous Supreme Court in *Illinois* v. *Lafayette* rejected the notion that * * * a container carried by an arrestee should be sealed rather than searched. Doubtless the Court would reach precisely the same conclusion as to containers within inventoried vehicles.").

Finally, the Court in *Lafayette* specifically rejected the suggestions made by the state court here (see Pet. App. 47-48) that the police officer should have considered the "personal" nature of the containers found in respondent's truck, and that an inventory search can extend only to containers that affirmatively indicate that they contain a valid object of an inventory search. In rejecting those contentions, the *Lafayette* Court explained that "[i]t is immaterial whether the police actually fear any particular package or container; the need to protect against such risks arises independent of a particular officer's subjective concerns." (462 U.S. at 646). On that issue, the Court restated a point made by Justice Powell in his concurring opinion in *Opperman*, that in conducting an inventory, unlike an investigative search, an officer

"does not make a discretionary determination to search based on a judgment that certain conditions are present. Inventory searches are conducted in accordance with established police department rules" (428 U.S. at 383).

Hence, contrary to the views of the court below, the Fourth Amendment standard of reasonableness requires only that the inventory search be conducted according to standard inventory procedures and that those procedures provide for inventorying the contents of containers that might, on a categorical basis, contain the legitimate objects of an inventory search.[3] The permissibility of a routine inventory search does not turn on whether the facts of a particular case support one or more of the justifications underlying the adoption of an inventory procedure—indeed, the practice would not be "routine" if it did. Cf. *United States* v. *Robinson*, 414 U.S. 218, 235-236 (1973).[4]

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[3] Of course, the degree of scrutiny in an inventory search should, in all events, be no more than necessary to produce an itemized list; it should not, for example, involve examining the contents of "materials such as letters or checkbooks that 'touch upon intimate areas of an individual's personal affairs' * * *." *Opperman*, 428 U.S. 380 n.7 (Powell, J., concurring), quoting *California Bankers Ass'n* v. *Schultz*, 416 U.S. 21, 78-79 (1974) (Powell, J., concurring). There is no suggestion in this case that the degree of scrutiny, once the officer opened the containers, was excessive.

[4] The facts of this case underscore the flaw in the state court's attempt to judge the reasonableness of the search based on the court's assessment of the presence (or absence) of affirmative signs that the particular containers at issue were likely to hold valuables or weapons. Although the court found insufficient indications to justify the inventory (Pet. App. 48), the record shows that the police discovered $700 in cash in one of the containers. See *id.* at 29.

b. The state court (Pet. App. 39-44), and now respondent (Br. in Opp. 4),[5] contend that *Lafayette* bears little on this case, because the inventory search in *Lafayette* was performed at the stationhouse incident to incarceration while the search in this case occurred outside the stationhouse incident to the impoundment of a motor vehicle. That distinction does not support a difference in result. Whether property is first taken into police custody at the stationhouse prior to incarceration or in the course of the impoundment of a motor vehicle, the governmental interests justifying an inventory procedure are virtually identical.

In both *Lafayette* and in this case the police were potentially responsible for the property they took into their custody, and in both cases the police stored the property on police premises for safekeeping.[6] Consequently, in both cases the inventory procedure was justified by the three concerns that support inventory searches generally: protection of the property, protection of the police from danger, and protection of the police from false claims of loss. In both cases, the property in police custody could presumably be

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[5] We note that in the trial court respondent practically admitted that *Lafayette* controlled the outcome of this case as a matter of federal constitutional law and relied instead on the Colorado Constitution. See Tr. 148, 161 ("I understand that based on [*Lafayette*], our federal argument is—has been basically emasculated. * * * I think it will be a cold day in August in Colorado before the * * * Colorado Supreme Court allows that to happen in this state."). Respondent did not file a brief with the Colorado Supreme Court, and that court did not hear oral argument on the case.

[6] Pursuant to standard police department procedures, the containers inventoried in this case were to "be removed from the vehicle and subsequently placed into Property for safekeeping" (see J.A. 90).

rendered reasonably secure from outside interference. Nonetheless, the police are not required to "post[] a guard" over the property while it is in their custody, as an alternative to inventorying and securing each item. See *Lafayette*, 462 U.S. at 648; *Cady* v. *Dombrowski*, 413 U.S. at 447. In addition, the dangers posed by property of unknown character are much the same in either case, particularly at the time the property is returned to the arrestee upon his release. See *Lafayette*, 462 U.S. at 646. And in either case, the police are subject to being falsely charged with theft of the property taken from the arrestee. For those reasons, the fact that the police initially inventoried the containers in different locations in the two cases should be irrelevant to the permissible scope of the inventory search. Just as inventorying the contents of the shoulder bag was reasonable in *Lafayette*, it was equally reasonable for the police to inventory the contents of the containers in this case.[7]

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[7] Not surprisingly, the Colorado Supreme Court stands almost alone in failing to read *Lafayette* and *Opperman* as establishing the validity of inventorying the contents of containers found during an inventory search of a lawfully impounded motor vehicle. See, *e.g.*, *United States* v. *Trullo*, No. 85-1708 (1st Cir. May 14, 1986) (false Pennzoil can); *United States* v. *Griffin*, 729 F.2d 475 (7th Cir.), cert. denied, No. 83-2027 (Oct. 1, 1984) (bag; storage box); *Henderson* v. *State*, 699 S.W.2d 419, 420-421 (Ark. Ct. App. 1985) (briefcase); *State* v. *Gasparro*, 480 A.2d 509, 516 (Conn. 1984), cert. denied, No. 84-2029 (Oct. 7, 1985) (briefcase); *State* v. *Slaybaugh*, 108 Idaho 551, 552-554, 700 P.2d 954, 955-957 (Ct. App. 1985) (purse); *Ciriago* v. *State*, 57 Md. App. 563, 567-572, 471 A.2d 320, 321-324, cert. denied, 300 Md. 152, 476 A.2d 721 (1984) (suitcases); *State* v. *Ferguson*, 678 S.W.2d 873, 877 (Mo. Ct. App. 1984) (briefcase); *People* v. *Gonzalez*, 62 N.Y.2d 386, 389-391, 465 N.E.2d 823, 824-825 (1984) (paper bag); *State* v. *Muralt*, 376 N.W.2d 25 (N.D. 1985) (canvas

3. Respondent contends that the inventory search in this case was unlawful because the police officers possessed considerable discretion in deciding whether to inventory respondent's truck (Br. in Opp. 6-8). In particular, respondent points out that when, as here, the driver of a motor vehicle is being arrested for committing a traffic offense, the police have discretion to follow "park and lock" procedures instead of impounding the vehicle (*ibid.*; see J.A. 88-94).

To be sure, the reasonableness of inventory searches depends in part on the absence of "significant discretion * * * in the hands of the individual officer [conducting the search] as to the subject of the search or its scope" (*Opperman*, 428 U.S. at 384 (footnote omitted)). In this case, however, any discretion the police officers may have exercised pertained only to the threshold determination whether to impound respondent's motor vehicle or to follow "park and lock" procedures.[8] There is no suggestion in the record that

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bag); *State* v. *Bronaugh*, 16 Ohio App. 3d 237, 239-242, 475 N.E.2d 171, 174-176 (1984) (suitcase; paper bag); *Wooldridge* v. *State*, 696 S.W.2d 252, 254-255 (Tex. Ct. App. 1985) (8-track case); *Boggs* v. *Commonwealth*, 331 S.E.2d 407, 414-415 (Va. 1985), cert. denied, No. 85-6009 (Feb. 24, 1986) (bag); see also *State* v. *McGuire*, 218 Neb. 511, 515-516, 357 N.W.2d 192, 196 (1984) (luggage); but see *People* v. *Nogel*, 137 Ill. App. 3d 392, 484 N.E.2d 516 (1985). The decisions to the contrary on which the state supreme court relied were all handed down prior to *Lafayette*. See Pet. App. 37-38.

[8] In commenting on the "considerable discretion" provided to the police under the city's vehicle impoundment procedures, the trial court appears to have been referring solely to the decision whether to impound or park and lock the vehicle. See J.A. 80. Notably, although the police directive introduced at trial focuses on impoundment of a motor vehicle incidental to an arrest of an individual or to a traffic accident, the city code provides for impoundment in a variety of circumstances. See

the police, once they made the threshold decision to impound the vehicle, exercised "significant discretion" in the subsequent performance of the inventory search or abused what little discretion they may have possessed. Indeed, all indications in the record are to the contrary.

As a matter of state law, the trial court construed the relevant police department directive (see J.A. 88-94) as requiring "a detailed inventory involving the opening of containers and the listing of contents." The court then specifically found that the police followed those standard procedures in inventorying the contents of respondent's truck, including the containers discovered inside (J.A. 80, 81, 82, 86). The court also found "that the decision to impound the vehicle and the decision to do the type of [inventory] search that was done were both made in good faith * * *" (*id.* at 80). Finally, the court found that the inventory search was performed to protect respondent's property and the police from claims of theft and from dangerous instrumentalities. The inventory procedure, the court found, was not a mere pretext for an investigative search, and it was not "aimed at [respondent] for any reason" (*id.* at 82, 86). The state supreme court neither questioned the lower court's construction of the local police department procedures nor disturbed any of its findings with regard to the officers' conduct of the inventory search. For these reasons, the seizure of the drugs in the course of the inventory search in this case was not in any respect the product of the exercise of impermissible discretion by the police.

City of Boulder Municipal Code § 7-7-2 (1985) (*e.g.*, traffic hazard, defective vehicle, fire, flood, or snow, parking in a handicapped zone).

CONCLUSION

The judgment of the Supreme Court of Colorado should be reversed.

Respectfully submitted.

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